

DEPARTMENT OF DEFENSE
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**PROCEDURES FOR PROVIDING REASONABLE
ACCOMMODATION FOR EMPLOYEES OR APPLICANTS WITH DISABILITIES**

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1. REFERENCES

1.1. Executive Order 13164, "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation" (July 26, 2000)

1.2. Title 29, U.S.C., Section 791 et seq., as amended (Rehabilitation Act of 1973)

1.3. Memorandum from Assistant Secretary of Defense (Charles S. Abell), "Component Procedures for Reasonable Accommodation" (August 7, 2001)

1.4. EEOC Directives Transmittal Number 915.003, "Policy Guidance on Executive Order 13164: Establishing Procedures To Facilitate The Provision of Reasonable Accommodation" (October 20, 2000)

1.5. Title 42, U.S.C., Section 12101, et seq., as amended (Title 1, Americans with Disabilities Act of 1990); Title 42, U.S.C., Sections 12201-12204 and 12210, as amended (Sections 501 through 504 of the Americans with Disabilities Act of 1990)

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1.6. Title 29, C.F.R., Part 1630 (Regulations to implement the equal employment provisions of the Americans with Disabilities Act)

1.7. Title 5, C.F.R., Part 610 (Hours of Duty)

1.8. Title 5, C.F.R., Part 213.3102 (Excepted Service; Excepted Schedules; Entire Executive Civil Service)

1.9. Title 5, C.F.R., Part 335 (Promotion and Internal Placement)

1.10. Title 5, C.F.R., Part 831.1201 (Retirement; Disability Retirement)

1.11. Title 5, U.S.C., Section 6120 (Flexible and Compressed Work Schedules)

1.12. Title 41, C.F.R., Part 301-70.400 (Temporary Duty (TDY) Travel Allowances; Policies and Procedures Relating to Travel of an Employee with a Disability or Special Need)

1.13. Title 41, C.F.R., Parts 301-10.123 through 301-10.124 (Temporary Duty (TDY) Travel Allowances; Airline Accommodation)

1.14. Title 10, U.S.C., Section 1582 (Assistive Technology Accommodations Program)

1.15. Standard Form 256, Self-Identification of Reportable Handicap, revised August 1987

1.16. Title 5, C.F.R., Part 339 (Medical Qualification Determinations)

1.17. EEOC Notice Number 915.002, "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)" (July 27, 2000)

1.18. Title 5, U.S.C., Section 552a (Privacy Act of 1974)

1.19. Title 29, C.F.R., Part 1611 (Privacy Act Regulations)

1.20. Title 5, C.F.R., Part 1201.3 (Practices and Procedures; Appellate Jurisdiction)

2. PURPOSE

This regulation establishes effective written procedures for processing requests for reasonable accommodation for employees and applicants that are qualified individuals with disabilities, pursuant to references (1.1) and (1.2). In addition, these procedures were designed with specific guidance provided by references (1.3) and (1.4).

3. POLICY SUMMARY

3.1. DSS shall make reasonable accommodations to the known physical or mental limitations of an employee or applicant who is a qualified individual with a disability.

3.2. It is the intent of this Agency to be a model employer of qualified individuals with disabilities. Reasonable accommodation is part of this Agency's continued effort to take action to prevent discrimination against employees and applicants with disabilities, because of architectural, technological, procedural, communication or transportation barriers, in accordance with reference (1.5). By implementing the procedures outlined in this regulation, the Agency intends to help remove barriers that prevent persons with disabilities from performing, or applying for jobs for which they are qualified. In addition, implementation of these procedures will expand the pool of qualified workers, thus allowing for the agency to benefit from the talents of people who might otherwise be arbitrarily barred from employment. These procedures will allow the Agency to handle such requests in a prompt, fair, and efficient manner and they will assure that individuals with disabilities understand how to approach the system and know what to expect when requesting an accommodation. These procedures are to be considered in conjunction with the requirements of references (1.1) - (1.5) and particularly, reference (1.6).

3.3. In providing reasonable accommodation the Agency reaffirms its intent to epitomize fair employment practices for qualified individuals with disabilities, thereby strengthening its established commitment and ability to give full consideration to the recruiting, hiring, placement, advancement and all other aspects of the employment process to qualified individuals with disabilities. Reasonable accommodation promotes the Agency's goal of actively seeking to foster positive attitudes toward individuals with disabilities, their potential to be employed in a broad range of grade levels and occupational series, their ability to function effectively and be recognized as having the inherent value to be viable contributors to the overall mission of this Agency.

4. APPLICABILITY

The requirements imposed by this regulation are applicable to all DSS employees and all DSS organizations. Any employee of DSS (hereinafter referred to as "employee") and any applicant seeking a position within DSS (hereinafter referred to as "applicant") that are determined to be a qualified individual with a disability may seek assistance with a request for reasonable accommodation in accordance with the provisions of this regulation.

5. ASSESSING REASONABLE ACCOMMODATION

5.1. The Agency is required to provide reasonable accommodation for a qualified individual with a disability to perform the essential functions of the position, unless it can demonstrate that the accommodation would impose an undue hardship on the operation of the Agency's program or pose a direct threat to the safety of the employee or others in the workplace.

5.1.1. Qualified Individual with a Disability. A qualified individual with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the position (e.g., one who meets the skill, experience, education, and other job-related requirements for the position).

5.1.2. Reasonable Accommodation. An accommodation is a change involving the workplace or the hiring process that enables a person with a disability to enjoy employment opportunities available to others. A reasonable accommodation is one which does not impose an undue hardship or direct threat to the operations of any agency program and which would allow an employee to perform the essential functions of the position or would provide an applicant the opportunity to fully participate in the hiring process. Reasonable accommodations generally fall under one of the following categories:

5.1.2.1. Accommodations that enable an employee or applicant with a disability to perform the essential functions of the position held or desired.

5.1.2.2. Accommodations that enable employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

5.1.2.3. Accommodations that are required to ensure equal opportunity in the hiring process.

5.1.3. Essential Functions. The essential functions of a job are those duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be essential if, among other things, the position exists specifically to perform that function, there are a limited number of employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on her/his ability to perform it.

5.1.4. Undue Hardship. A reasonable accommodation that would impose an undue hardship on the operation of the Agency does not have to be provided. An undue hardship means that a specific accommodation would require **significant difficulty or expense**. When evaluating budgetary or administrative concerns to determine if undue hardship exist, the Agency must follow standards enunciated in reference (1.5). The Agency is required to expend funds on reasonable accommodation, thus, cost alone should normally not be the sole basis for denying an accommodation. Decisions to expend funds in support of reasonable accommodations should be made in accordance with established agency regulations and policy regarding such expenditures. In determining whether an accommodation would impose an undue hardship on the Agency, the Deciding Official shall consider the following factors:

5.1.4.1. The nature and cost of the accommodation needed;

5.1.4.2. The overall financial resources of the facility involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on

expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

5.1.4.3. The overall financial resources of the Agency; the overall size of the Agency with respect to the numbers of employees; the number, type, and location of its facilities; and

5.1.4.4. The type of operation of the Agency, including its composition, structure, and functions of the workforce, the geographic separateness, administrative or fiscal relationship to the facilities in question.

5.1.5. Direct Threat. A direct threat means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. The employer should identify the specific risk posed by the employee or applicant. For individuals with mental or emotional disabilities, the employer must identify the specific behavior on the part of the individual that would pose the direct threat. For individuals with physical disabilities, the employer must identify the aspect of the disability that would pose the direct threat. Such consideration must rely on objective, factual evidence and not be based on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes regarding the nature or effect of a particular disability. The Agency should consider the following factors:

5.1.5.1. The duration of the risk

5.1.5.2. The nature and severity of the potential harm

5.1.5.3. The likelihood that the potential harm will occur

5.1.5.4. The imminence of the potential harm and

5.1.5.5. Whether an accommodation would lessen the risk

5.2. Determining the Appropriate Reasonable Accommodation. When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job or hiring process, the supervisor should:

5.2.1. Analyze the particular job involved and determine its purpose and essential functions or analyze the hiring process involved and determine its purpose.

5.2.2. Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.

5.2.3. In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position or meet the requirements of the hiring process.

5.2.4. Consider the preference of the individual to be accommodated, select, and implement the accommodation that is most appropriate for the employee or applicant and the Agency.

5.2.5. Consider, with the employee or applicant requesting a reasonable accommodation, alternate accommodations that would accomplish the same purpose, particularly if there are alternate accommodations that are more effective.

5.3. The need for reasonable accommodation is determined on an individual basis depending on the unique circumstances involved and taking into consideration: the employee's or applicant's specific disability and the existing limitations to the performance of a particular job function or the inability to participate fully in the hiring process; the essential duties of a particular job; the work environment and whether the proposed accommodation would create an undue hardship on the Agency.

5.4. In all cases, it is recommended that the employee or applicant be consulted before an accommodation is made. Accommodations are highly individualized, therefore, what may have been successful for one person with a disability may not be appropriate for another. In many cases the person may have made adjustments to her/his disability so that no accommodation is needed or desired. The employee or applicant requesting the accommodation should participate to the fullest extent possible in helping to identify an effective accommodation.

5.5. On-going communication is particularly important where the specific limitation, problem, or barrier is unclear, where an effective accommodation is not obvious, or where the parties are considering different possible reasonable accommodations. In those cases where the disability, the need for accommodation, and the type of accommodation which should be provided are clear, extensive discussions are not necessary.

5.6. Reasonable accommodation should also be considered in recruitment, training, promotion, reassignment, and developmental assignments. To give persons with disabilities opportunities to attend formal training programs, the Agency is required to use funds to provide reasonable accommodation for special services, such as interpreters, readers, Braille and taping of course materials.

5.7. An accommodation must be work-related and not for personal use (e.g., items such as hearing aids or eyeglasses will not be provided).

5.8. Lowering of a performance or production standard is not required to provide an accommodation. Employees are expected to be able to perform the essential functions of the position.

5.9. For applicants, the responsibility to provide reasonable accommodation does not end when the applicant with a disability is placed in a position. The obligation to provide reasonable accommodations for qualified individuals with disabilities is ongoing.

5.10. The Office of Diversity Management (EEO) is available to provide assistance.

6. TYPES OF REASONABLE ACCOMMODATION

Necessary reasonable accommodation may include, but shall not be limited to:

6.1. Making Facilities Readily Accessible. Modifications may include, but shall not be limited to, raised graphic markings in and around elevators, installation of a telecommunication device in each facility, and accessibility of all facilities to individuals in wheelchairs.

6.2. Job restructuring. As a reasonable accommodation, this may involve reallocating or redistributing the marginal functions of a job. However, it is not required that the essential functions of the job be reallocated as a reasonable accommodation. Job restructuring frequently is accomplished by exchanging marginal functions of a job that cannot be performed by a person with a disability for marginal job functions performed by one or more other employees. It may be a reasonable accommodation to modify the essential functions of a job by changing **when** or **how** they are done.

6.3. Part-time or Alternative Work Schedules. Part-time work and alternative work schedules, including flexible work schedules and compressed work schedules may be considered as a reasonable accommodation, where it will not be an undue hardship. Reference (1.7) should be consulted if considering part-time or alternate work schedules.

6.4. Acquisition or Modification of Equipment or Assistive Devices. Such equipment or devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work.

6.5. Appropriate Adjustment or Modification of Examinations. The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process without affecting the desired goals of the testing.

6.6. Alternate Format. As needed, material that can be provided in alternative formats such as Braille, disk, or tape.

6.7. Auxiliary Aid and Services. Readers, interpreters, and personal assistants can be hired non-competitively through the Schedule A appointing authority pursuant to reference (1.8). Such persons can be hired on a full-time, part-time or intermittent basis. In the event that the personnel ceiling is reached or exceeded while attempting to provide reasonable accommodation such as readers, interpreters or personal assistants, a request may be made for ceiling relief from the Office of Management and Budget. Each request will be decided on a case-by-case basis.

6.7.1. Readers. Employees who are blind may be entitled to the services of a reader to perform their job effectively. A variety of options are available and should be determined on a

case-by-case basis with the employee, since the reader and the employee must be compatible with each other. Readers can be a part or full time employee hired to provide this service, a qualified co-worker who provides informal assistance to an employee given collateral duty responsibilities. The specific needs of the employee who is blind should be analyzed to identify how much time is needed and what the qualifications of the reader should be.

6.7.2. Interpreters. Qualified interpreters can be hired on a full-time, part-time or intermittent basis. They can also be hired under contract with a local interpreting service on an “as needed” basis. An employee who knows sign language or who is taking a sign language class is **not** an acceptable substitute for a qualified interpreter.

6.7.3. Personal Assistance. Some people with severe disabilities may require personal assistance with specific tasks such as getting from one building to another, traveling on official business, obtaining research or writing materials, or using rest room facilities.

6.8. Reassignment:

6.8.1. Pursuant to reference (1.1), reassignment will be considered as a reasonable accommodation if the Agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential job functions of his or her current position. Reassignment applies only to employees, not applicants. Such a reassignment should be to a vacant position at the same grade and salary level, and one for which the employee is qualified with or without reasonable accommodation. There is no requirement that the Agency construct a new position for an employee who is disabled. The Agency’s reassignment responsibility includes only existing positions. These reassignments will be made with the involvement of the Chief, Human Resources Operations in consonance with this regulation and in accordance with reference (1.9).

6.8.2. Under the disability retirement procedures promulgated by the Office of Personnel Management (OPM), pursuant to reference (1.10), reassignment must be considered whenever an employee seeks disability retirement. The Agency must demonstrate that efforts were made to reassign the employee to a vacant position within the Agency at the same grade or pay, within the commuting area.

6.8.3. While disability retirement limits reassignment to the commuting area, such specific limitations pertain to reassignment for reasonable accommodation. It is appropriate to consider vacancies which may exist in other offices, particularly for persons in high-graded positions, if they are willing to voluntarily relocate. The cost of Permanent Change of Station move will usually be borne by the employee under a hardship transfer, unless it is advantageous to the government to have the employee reassigned.

6.9. Telecommuting. Telecommuting and flexiplace programs allow employees to work part or all of the work day at home or at another off site location. Both telecommuting and flexiplace programs are an effective accommodation for people with disabilities and a valuable tool for

recruitment and retention of a quality work force. Reference (1.11) provides additional guidance for flexiplace.

6.10. Travel. In accordance with reference (1.12), the Agency may fund additional travel expenses incurred by an employee with a disability while on official travel if reasonable. In order to accommodate an employee with a disability travelling on Temporary Duty Orders, the following travel expenses can be reimbursed by the Agency:

6.10.1. Transportation and subsistence expenses incurred by an attendant accompanying the employee, whether the attendant is or is not a member of the employee's immediate family, when the employee requires the assistance of an attendant.

6.10.2. Cost of specialized transportation for the employee to, from, and/or at the temporary duty location.

6.10.3. Cost of specialized services provided by a commercial carrier necessary to accommodate the employee's disability.

6.10.4. Costs incurred as a direct result of the employee's disability for baggage handling in connection with public transportation or at lodging facilities.

6.10.5. Cost of renting and/or transporting a wheelchair.

6.10.6. Cost of premium-class or first class accommodations when necessary to accommodate the employee's disability pursuant to reference (1.13). The necessity for such accommodations must be substantiated in writing by a competent medical authority.

7. COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM (CAP)

7.1. An important resource available to both the employer and the individual requesting the accommodation is the Department of Defense (DoD) Computer/Electronic Accommodation Program (CAP). CAP was established by the DoD to enable and assist DoD activities in complying with reference (1.14), which require computer and telecommuting systems to be accessible. CAP pays for a wide variety of assistive technology for people with hearing, visual dexterity, cognitive and communication disabilities. Examples of CAP services available to the Agency at no cost include:

7.1.1. Buying equipment to make computer and telecommunications systems accessible to employees with disabilities. CAP will purchase equipment for employees participating in a Flexiplace program to use in their homes or at other off-site locations. Items include computer hardware and software, telephone equipment, fax machines, and assistive equipment. The Agency retains ownership of all such equipment.

7.1.2. Funding sign language interpreters, readers, and personal assistants for employees attending long-term training (for two days or more).

7.1.3. Providing expertise in solving accessibility problems through the use of software, hardware, and other assistive technology.

7.1.4. Providing training and educational support.

7.2. The supervisor or manager in the employee's or applicant's immediate chain of command or the EEO office may approve request for CAP services and/or equipment by completing the Computer/Electronic Accommodation Program Request Form, Enclosure (1). The completed request may be mailed or sent by fax to the address indicated on the form. This form may be obtained from the EEO office or may be downloaded from the following CAP web site:

<http://www.tricare.osd.mil/cap>. A courtesy copy should be provided to the Office of Diversity Management.

8. REQUESTS FOR REASONABLE ACCOMMODATION

8.1. Overview. A request for reasonable accommodation is a verbal or written statement from an employee or applicant requesting an adjustment or change involving the workplace or in the hiring process of employment for a reason related to a medical condition. A request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability. Any employee or applicant may consult with the EEO office for further information or assistance in connection with requesting or processing a request for reasonable accommodation. (See Enclosure (2) for examples of situation which may require reasonable accommodation.)

8.2. Disclosure of Disability. The Agency is required to make reasonable accommodation to the **known** physical or mental disability of an employee or applicant. However, where the disability is not apparent, it is the responsibility of the employee or applicant requesting the accommodation to notify the Agency of his or her disability and any necessary accommodations. Although an employee may self-identify their disability through reference (1.15), "Self Identification of Reportable Handicap," this form is used for affirmative action purposes only, is not provided to the supervisor, and is not used for the purpose of requesting a reasonable accommodation. Those persons requesting a reasonable accommodation are encouraged to utilize Enclosure (3) of this regulation, "Request for Reasonable Accommodation." Completing this form is not required to initiate a request for reasonable accommodation, however, it is required to process such requests.

8.3. Methods of Disclosure. The following persons may request a reasonable accommodation:

8.3.1. An **employee** may request a reasonable accommodation orally or in writing from her/his supervisor; another supervisor or manager; any agency employee, or the EEO office.

8.3.2. An **applicant** may request a reasonable accommodation orally or in writing from any DSS employee with whom the applicant has contact in connection with the hiring process.

8.3.3. A **family member, health professional, or other representative** may request an accommodation on behalf of an employee or applicant. The request should go to one of the same persons to whom the employee or applicant should make the request. When a request for accommodation is made by a third party, the applicant or employee with a disability must be contacted to confirm whether or not he or she, in fact, desires a reasonable accommodation.

8.4. Receipt of Request for Reasonable Accommodation. Any DSS employee or DSS organization that receives a request for a reasonable accommodation from any employee or applicant shall forward such request to the person responsible for processing the particular request for reasonable accommodation no later than **five calendar days** after receiving the request. If a determination cannot be made as to who the request should be forwarded to, the employee or organization should immediately consult with the EEO office.

9. PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

9.1. Deciding Official. First-line supervisors shall be the Deciding Official for requests for reasonable accommodation from employees. The Chief, Human Resources Operations shall be the Deciding Official for requests for reasonable accommodation from applicants. The Deciding Official will have the primary responsibility for processing requests for reasonable accommodation to include: determining if the person requesting the accommodation is a qualified individual with a disability as defined by law and this regulation, identifying the specific accommodation being requested, considering whether the specific accommodation is appropriate under the circumstances, deciding whether or not medical documentation is necessary to process the request, taking a proactive approach in searching out and considering alternate accommodations, consulting with appropriate resources for assistance, making a clear and thoughtful decision regarding whether or not to grant the request for accommodation, and properly documenting any decisions or actions taken with regard to a request for reasonable accommodation.

9.2. Procedures. Upon receipt of either a verbal or written communication that an employee or applicant is requesting an accommodation, the Deciding Official shall provide such person with Enclosure (3), Request for Reasonable Accommodation,” for completion. If such person is unable to complete the form, the Deciding Official shall complete the form on the person’s behalf by completing sections 1 through 3, except for the signature block. Upon receipt of a completed Enclosure (3) from an employee or applicant, the Deciding Official must make a determination as to whether or not the request can be approved.

9.2.1. Granting Request. As soon as the Deciding Official determines that a reasonable accommodation will be provided, that decision should be immediately communicated to the individual making the request. If the accommodation cannot be provided immediately, the Deciding Official must inform the individual of the projected time frame for providing the accommodation.

9.2.1.1. Once a request for a reasonable accommodation has been granted, the employee or applicant does not have to file another request for the same or similar accommodation if he or she needs the accommodation on a repetitive basis. If a request for accommodation is based upon a new or different disability or requires an accommodation that is significantly different than what has been previously granted, a new request should be submitted in accordance with this regulation.

9.2.1.2. Enclosure (3) must be completed indicating that an approval for a request for reasonable accommodation has been granted. Within **10 calendar days** of granting a request for reasonable accommodation, Enclosure (3) should be sent to the EEO office and a copy should be provided to the individual making the request. If the person making the request is different than the employee or applicant with a disability, the employee or applicant should also receive a copy of Enclosure (3).

9.2.2. Denial of Request. As soon as the Deciding Official determines that a request for reasonable accommodation will be denied he or she must complete Enclosure (4), "Notice of Denial of Reasonable Accommodation Request." The explanation for the denial should be written in plain language, clearly stating the **specific reasons for denial** (e.g., why the accommodation would not be effective or why it would result in undue hardship). Where the Deciding Official has denied a specific requested accommodation, but offered to make a different one in its place, which was not agreed to by the disabled individual, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the Deciding Official believes that the chosen accommodation will be effective. Reasons for the denial of a request for reasonable accommodation might include the following:

9.2.2.1. The employee or applicant is not a qualified individual with a disability.

9.2.2.2. The requested accommodation would not be effective.

9.2.2.3. Providing the requested accommodation would result in undue hardship. Before reaching this determination, the Deciding Official must have explored whether other effective accommodations exist which would not impose undue hardship and therefore can be provided.

9.2.2.4. Medical documentation is inadequate to establish that the person making the request is a qualified individual with a disability and/or needs a reasonable accommodation.

9.2.2.5. The requested accommodation would require the removal of an essential function.

9.2.2.6. The requested accommodation would require the lowering of a performance or production standard.

9.2.3. The written notice of denial also informs the individual making a request for reasonable accommodation that he or she has certain rights. First, the employee or applicant has the right to request reconsideration of the denial. Second, the employee or applicant has the right to file an EEO complaint, an MSPB appeal, or participate in the Agency's Alternative Dispute Resolution (ADR). A Deciding Official must advise the employee or applicant as to these rights.

9.2.4. Within **10 calendar days** of denying a request for reasonable accommodation, Enclosures (3) and (4) should be forwarded to the EEO office and copies of both forms should also be provided to the individual requesting the accommodation. If the person making the request is different than the employee or applicant with a disability, the employee or applicant should also receive copies of Enclosures (3) and (4).

9.3. Requests for Medical Documentation and Confidentiality.

9.3.1. Requests for Medical Documentation. If an employee or applicant requests an accommodation and the justification for the disability is not apparent, the Deciding Official may request medical documentation of the individual's disability, pursuant to reference (1.16). In addition, reference (1.17) is extremely helpful guidance in making disability-related inquiries and medical examinations of employees pursuant to reference (1.5).

9.3.1.1. The Deciding Official may request medical documentation to support the following:

9.3.1.1.1. The nature, severity, and duration of the individual's impairment;

9.3.1.1.2. The activity/activities that the impairment limits;

9.3.1.1.3. The extent to which the impairment limits the individual's ability to perform the activity/activities; and/or

9.3.1.1.4. Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

9.3.1.2. The Deciding Official may require that medical documentation concerning the disability or functional limitations come from an appropriate professional, such as a doctor, social worker, or rehabilitation counselor (hereinafter referred to as "health professional"). However, only information that is relevant to making a decision about the reasonable accommodation may be sought.

9.3.1.3. In order for a health professional to provide useful information regarding the employee's or applicant's ability to perform a job, the Deciding Official should provide information to the health professional concerning the nature of the position, essential

functions the individual will be expected to perform, and any other information that is relevant to evaluating the request.

9.3.1.4. The Deciding Official may also request that the Agency's own health professional review an employee or applicant's medical information, at the expense of the Agency, to assist with making a determination regarding a request for a reasonable accommodation.

9.3.1.5. The Deciding Official may request that an employee or applicant submit to a medical exam only when:

9.3.1.5.1. If the individual making a request for reasonable accommodation has provided insufficient documentation from her/his own health professional to substantiate the existence of a disability and the need for reasonable accommodation.

9.3.1.5.2. If an employee or applicant fails to provide sufficient documentation of her/his disability and the need for reasonable accommodation, the Deciding Official must inform the employee or applicant that the previously submitted documentation is insufficient, identify the specific type of information that is being sought, and allow the individual the opportunity to provide the information before requesting a medical exam.

9.3.1.5.3. A Deciding Official can request that the employee or applicant to sign a limited medical release and then either submit a list of specific questions to be answered to the employee's or applicant's health professional or have the Agency's own health professional contact the employee or applicant's health professional to make the appropriate inquiry.

9.3.2. Confidentiality. Medical documentation may contain sensitive information concerning an employee or applicant and such information **must** be kept confidential, pursuant to references (1.2), (1.18) and (1.19).

Only the Deciding Official and those required to assist the Deciding Official in making a decision regarding the request for reasonable accommodation should review and discuss medical documentation submitted by an employee or applicant for purposes of evaluating such a request.

9.3.2.1. Without specific permission from the Office of General Counsel (OGC), the only other circumstances where medical documentation or information of a personal nature regarding a disability should be disclosed are to:

9.3.2.1.1. supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);

9.3.2.1.2. first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;

9.3.2.1.3. government officials may be given information necessary to investigate the Agency's compliance with the Rehabilitation Act;

9.3.2.1.4. personnel processing workers' compensation claims, in certain circumstances; and

9.3.2.1.5. Agency EEO officials may be given the information to maintain records, evaluate, and report on the Agency's performance in processing reasonable accommodation.

9.3.2.2. If other persons inquire as to the reasons why an employee or applicant is being provided an accommodation, a Deciding Official and other agency officials must not reveal the fact or circumstances surrounding the disability. Simply confirming that a person has obtained official approval for having the accommodation is a sufficient response. Providing the reasons why the accommodation has been provided would be improper.

9.3.2.3. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

9.3.2.4. If the employee or applicant does not wish to share medical documentation with the Deciding Official, he or she may provide such information directly to the EEO office or Employee Relations (ER). Either the EEO office or ER, or a health professional providing expertise to those offices, may review the requested medical information and make a determination as to the existence of a disability to the Deciding Official.

9.4. Time Requirements. The reasonable accommodation process begins as soon as the request for accommodation is made. Although Enclosure (3) must be completed, a verbal or other written request for accommodation will officially initiate the timing for processing a request for a reasonable accommodation, **not** receipt of the completed form. A Deciding Official must approve or deny a request for accommodation within **30 calendar days** from receipt of a request for reasonable accommodation, or sooner, if possible. Since a Deciding Official may need the full time period to engage in the interactive process and collect all relevant information about possible accommodations, he or she should not delay beginning this process.

9.4.1. Expedited Processing Required. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision sooner than 30 calendar days. For example, an expedited review and decision would be required when a reasonable accommodation is needed:

9.4.1.1. To enable an applicant to apply for a job. Depending on the timetable for receiving applicants, conducting interviews, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job.

9.4.1.2. To enable an employee to attend a meeting scheduled to occur shortly. An employee may need a sign language interpreter for a meeting scheduled to take place in five days.

9.4.2. Delays in Processing. Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation are considered to be extenuating circumstances. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation may be extended as reasonably necessary. Extensions based on extenuating circumstances should be limited to circumstances where they are strictly necessary. All DSS employees are expected to act as quickly as reasonably possible in processing requests and providing for reasonable accommodation.

9.4.2.1. “Extenuating circumstances” covers limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, you may not delay processing or providing an accommodation because a particular staff member is unavailable. The following are examples of extenuating circumstances:

9.4.2.1.1. There is an outstanding initial or follow-up request for medical information.

9.4.2.1.2. The purchase of specialized equipment may take longer than 30 calendar days because of requirements under the Federal Acquisition Regulation and DoD Acquisition Policies and Procedures.

9.4.2.1.3. Equipment is back ordered, or the needed goods or services are not immediately available.

9.4.2.1.4. The employee with a disability needs to try working with equipment on a trial basis to ensure that it is effective before a commitment is made to purchase the equipment.

9.4.2.1.5. An accommodation involves the removal of architectural barriers.

9.4.2.2. Failure to meet the time frame solely because a Deciding Official delayed processing the request is not an extenuating circumstance.

9.4.2.3. Notice of Delay. Where extenuating circumstances are present, the Deciding Official must notify the individual requesting the reasonable accommodation of the reason for the delay, and the approximate date on which a decision or provision of the reasonable accommodation is expected. Any further developments or changes should also be communicated promptly to the individual making the request. If the accommodation request process exceeds **sixty calendar days** due to extenuating circumstances, the Deciding Official must inform the EEO office of the delay and provide the reasons for the delay. If provision of an agreed upon

reasonable accommodation exceeds the time estimated on Enclosure (3), the Deciding Official must inform the EEO office of the delay and the reasons for the delay.

9.4.2.4. Temporary Measures. If there is a delay in providing a reasonable accommodation, the Deciding Official must investigate whether **temporary measures** can be taken to assist the employee during the interim. This could include providing the requested accommodation on a temporary basis or providing measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if: (1) temporary measures do not interfere with the operations of the Agency; and (2) the employee is clearly informed that temporary measures are being provided with the accommodation only on a temporary, interim basis. For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.

9.4.2.5. Medical Documentation. If a delay is attributable to the need to obtain or evaluate medical documentation or there has not been a determination that the individual is entitled to an accommodation, the accommodation may be provided on a temporary basis. In such case, the Deciding Official will notify the individual in writing that the accommodation is being provided on a temporary basis pending a decision regarding the accommodation request. A Deciding Official who approves such temporary measures are responsible for assuring that they do not take the place of a permanent accommodation and that all necessary steps to secure the permanent accommodation are being taken as soon as possible.

9.4.3. If the Deciding Official believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the Deciding Official will make such request to ER as soon as possible after his or her receipt of the request for reasonable accommodation, but before the expiration of the **30-day period**. DSS recognizes that the need for documentation may not become apparent until after the interactive process has begun. All efforts shall be made to obtain and review necessary medical information within the 30-day time period.

9.5. Coordination with Agency Officials. A Deciding Official must properly coordinate with Agency Officials when processing requests for reasonable accommodation.

9.5.1. If approving request for reasonable accommodation, the Deciding Official must consult and coordinate with both the EEO office and ER.

9.5.2. If a determination regarding a request for reasonable accommodation requires medical documentation, the Deciding Official must consult and coordinate requesting such additional information with ER.

9.5.3. If denying a request for reasonable accommodation, the Deciding Official must consult and coordinate with EEO, ER, and OGC.

10. APPEAL PROCESS/INFORMAL DISPUTE RESOLUTION

10.1. Employees and applicants with disabilities can request prompt reconsideration of a denial of reasonable accommodation. Any denials of a request for reasonable accommodation must be appealed within **30 calendar days** of receipt of Enclosure (4) (the written denial of the request for reasonable accommodation). If 30 calendar days have passed since Enclosure (3) has been received, an employee or applicant with a disability desiring an accommodation must file a new request for reasonable accommodation and start the request process from the beginning.

10.1.1. A request for reconsideration may be oral or in writing, however, documentation and any evidence that might support a request for reconsideration is extremely helpful in making an informed decision regarding the request for reconsideration. An employee or applicant may use Enclosure (4) to submit a request for reconsideration; however, it is not required to be used by the employee or applicant.

10.1.2. If an employee or applicant with a disability desires reconsideration, he or she should first ask the Deciding Official to reconsider the decision. The individual may present additional information in support of her/his request along with Enclosure (5), if desired. The Deciding Official will notify the EEO office within **3 calendar days** if he or she receives a request for reconsideration. The Deciding Official will respond to the request for reconsideration **within 15 calendar days**, or sooner if possible, of receipt of the request for reconsideration. The Deciding Official will use Enclosure (5) to document her/his decision regarding the request for reconsideration. If the employee or applicant does not use Enclosure (5), the Deciding Official should complete sections 1 through 5 of that form, except for the signature block. The Deciding Official will forward her/his decision regarding a request for reconsideration to the EEO office within **10 calendar days** of her/his final decision.

10.1.3. If the Deciding Official does not reverse the decision, the employee or applicant can ask the Director of the EEO office for reconsideration **within 30 calendar days** of receiving notice that the Deciding Official is not granting the request for reconsideration. If 30 calendar days have passed since being informed that the Deciding Official will not grant the request for reconsideration, the employee or applicant with a disability desiring an accommodation must file a new request for reasonable accommodation and start the request process from the beginning. The Director of EEO will respond to a request for reconsideration denied by a Deciding Official **within 15 calendar days** or sooner if possible, of receipt of the request for reconsideration. The Director of EEO will use Enclosure (5) to document her/his decision regarding the request for reconsideration.

10.1.4. Coordination with Agency Officials: all requests for reconsideration shall be coordinated with the EEO office, ER, and OGC.

10.1.5. Any deadlines that employees or applicants fail to meet may be challenged if good cause exists for failing to meet such deadlines.

10.2. Pursuing any of the informal dispute resolution procedures identified above, including seeking reconsideration from the Deciding Official or the Director of EEO does not affect the time limits for initiating any other statutory claims. An individual's participation in any or all of these informal dispute resolution processes does not satisfy the requirements for bringing a claim under Equal Employment Opportunity Commission (EEOC) or Merit Systems Protection Board (MSPB) regulations. Requirements governing the initiation of statutory claims, including time frame for filing such claims, remain unchanged by this regulation.

10.3. An individual who chooses to pursue statutory or other alternative dispute resolution (ADR) remedies for denial of requests for reasonable accommodation must:

10.3.1. For an EEO Complaint pursuant to 29 C.F.R., Part 1614: contact an EEO counselor in the EEO office within 45 days from the date of receipt of the written notice of denial of the request for reasonable accommodation.

10.3.2. For a MSPB Appeal pursuant to 5 C.F.R., Part 1201: initiate an appeal to the MSPB within 30 days of the effective date of an appealable adverse action as defined in reference (1.20); or

10.3.3. For utilizing ADR: contact the EEO office to initiate a request for participation in the Agency's ADR process.

11. RECORD RETENTION AND REPORTING REQUIREMENTS

11.1. Record Retention. Any information collected pursuant to this regulation must be kept pursuant to reference (1.14). All records obtained or created during the processing of a request for reasonable accommodation become part of the Privacy Act System of OPM-GOVT-10. These records will be maintained separately by the EEO office. A Deciding Official shall not keep official records of reasonable accommodation requests, and such requests and supporting documentation, specifically medical information, shall not become part of an official personnel file.

11.1.1. The EEO office shall retain records of reasonable accommodation requests for a period of three years from the date of the request for reasonable accommodation.

11.1.2. The documents associated with this regulation shall be retained as follows:

The Deciding Official will forward all original documents to the EEO office, including, but not limited to Enclosures (1), (3), and (4) of this regulation and any additional medical documentation provided in connection to the request for reasonable accommodation.

11.2. Reporting Requirements. Pursuant to reference (1.1), the Agency is required to track the processing of requests for reasonable accommodation. The EEO office will prepare an annual

report that will be made available to all employees and submitted to the EEOC. The report will contain the following information:

11.2.1. The number and types of reasonable accommodations that have been requested in the hiring process and whether those requests have been granted or denied;

11.2.2. The jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;

11.2.3. The types of reasonable accommodations that have been requested for each of those jobs;

11.2.4. The number and types of reasonable accommodations for each job, by agency component, that have been approved, and the number and types of accommodations that have been denied;

11.2.5. The number and types of requests for reasonable accommodations that relate to the benefits or privileges of employment, and whether those requests have been granted or denied;

11.2.6. The reasons for denial of requests for reasonable accommodation;

11.2.7. The amount of time taken to process each request for reasonable accommodation; and

11.2.8. The sources of technical assistance that have been consulted in trying to identify possible reasonable accommodation.

CHARLES J. CUNNINGHAM, JR.
Director

- 5 Enclosures
- 1. CAP Accommodation Request Form
- 2. Questions, Answers, & Examples
- 3. Request for Reasonable
Accommodation
- 4. Notice of Denial of Reasonable
Accommodation Request
- 5. Request for Reconsideration

